

In all such instances, the Commission concluded that the public could benefit from either new or improved commercial and noncommercial service. Intraband Television Channel Exchanges, 59 RR 2d 1455, 1461 (1986), recon. denied, 3 FCC Rcd 2517 (1988).

57. The Commission has further indicated that the extent to which a proposed channel exchange will result in gains or losses of service to viewers is a public interest factor. Id. 59 RR2d at 1465; Clermont and Cocoa, Florida, 67 RR 2d at 268; Amendment of Section 73.606(b) (Boca Raton and Lake Worth, Florida) (NPRM), MM Docket No. 93-234, RM-8289, released August 26, 1993, at ¶¶ 4 to 5. The Commission has made it clear that ". . . once in operation a station has an obligation to maintain service to its viewing audience, and that the withdrawal or downgrading of service is justifiable only if offsetting factors associated with the proposal establish that the public interest will be benefitted." KTVO, Inc., 57 RR2d 648, 649 (1984). Any loss of service is *prima facie* inconsistent with the public interest. Coronado Communications, 8 FCC Rcd 159, 71 RR 2d 1250, 1254 (Chief, Video Serv. Div. 1992).

58. KKTV's Comments demonstrated that the Channel Swap as proposed by the NPRM (*i.e.*, SCC's continued use of the Baculite Mesa site) would result in a loss of first off-air primary commercial service to 2,216 persons, while there would be a gain of first off-air primary noncommercial service of only 2,906 persons. See Comments of KKTV, Inc. at 6 to 10 and Exhibit A to Comments of KKTV, Inc. Thus, the Channel Swap as proposed by the NPRM with SCC using the Baculite Mesa site would result in a significant loss of first off-air commercial service which *prima facie* would not be in the public interest.

59. The losses of service would be even worse if the Commission were to permit SCC to obtain the Cheyenne Mountain construction permit as part of the Channel Swap, as urged by USC and SCC. If the Channel Swap were permitted and SCC were permitted to broadcast from the Cheyenne Mountain site, 29,367 people would lose their only off-air primary commercial service. This loss of first off-air primary commercial service would dwarf the 2,906 people who would gain their first off-air noncommercial service if the swap were approved. See Reply Comments of

KKTV, Inc. at 18 and Exhibit C to Reply Comments of KKTV, Inc.

60. The above facts, which the Report and Order never considered because a decision was reached on other grounds, clearly demonstrate that the Channel Swap with the inclusion of the Cheyenne Mountain site, as argued by USC and SCC, would not be in the public interest. The reason is simple: the loss of first off-air primary commercial service by 29,367 people that would result if SCC were permitted to carry out the Channel Swap and broadcast from Cheyenne Mountain would *prima facie* not be in the public interest. The Commission simply should not permit SCC to evade its clear obligation to maintain a primary first commercial service to 29,367 people in its current service area. The massive losses in first off-air primary service which would result were the Commission to approve a channel swap which permitted SCC to operate its commercial station from Cheyenne Mountain is particularly contrary to the public interest.

61. There is a fifth and final reason why the proposed Channel Swap is not in the public interest, regardless of whether the swap were to limit SCC to the Baculite Mesa site or were to permit SCC to use the Cheyenne Mountain site. As the Commission correctly pointed out in the NPRM, USC was granted the construction permit to move its transmitting facilities to Cheyenne Mountain based upon the "...stated need to continue providing noncommercial educational television service to Colorado Springs without relying on a translator...." NPRM at ¶ 8. As the Commission noted in the NPRM, in 1990, USC filed a modification application, File No. BPET-900122KE, to change its transmitting site based on its alleged commitment to serve Colorado Springs. NPRM at ¶ 8.

62. In granting USC's application in 1991, the Commission also granted USC a waiver of Section 73.610(b) because the site on Cheyenne Mountain proposed by USC does not comply with the mileage separation requirements of that rule. The waiver permitted use of the Cheyenne Mountain site, which is short spaced by 8.8 kilometers (5.5 miles) to co-channel station KJCT(TV), Grand Junction, Colorado and short spaced 13 kilometers (8.2 miles) to a vacant co-channel allotment at Laramie, Wyoming. NPRM at ¶ 5.

63. The NPRM examined this situation and observed that, if the channel swap were approved, KTSC(TV) would experience shadowing in Colorado Springs and USC proposes to use a translator to provide service to viewers in the shadowed area of Colorado Springs. NPRM at ¶ 8. In response to this proposal, the NPRM stated, "...we do not believe it is generally desirable to replace primary service to [the Colorado Springs] community, as contemplated in connection with USC's waiver request, with secondary service which could ultimately be forfeited to a full service television operation." NPRM at ¶ 8.

64. The NPRM's analysis on this point is clearly correct. The public interest will not be served by allowing USC to abandon the representations it made in its modification application. USC's modification application was granted based upon a clear and permanent public interest benefit -- anticipated off-air primary noncommercial television service to be provided to the people of Colorado Springs. In granting the modification application, the Commission was clearly weighing this anticipated benefit against the possible harm to its equally important station spacing rule. The Commission only grants waivers of its station spacing rule when provided with a showing of another equally compelling public interest benefit. Caloosa Television Corp., 4 FCC Rcd 4762, 66 RR2d 1303 (1989). In the case of the USC modification application, the benefit asserted by USC was the provision of off-air primary noncommercial service to Colorado Springs. NPRM at ¶¶ 5, 8.

65. By now proposing a channel exchange which completely repudiates USC's commitment to provide off-air primary noncommercial service to Colorado Springs, USC and SCC have presented a Channel Swap Petition devoid of any meaningful public interest benefit to the people of Colorado Springs. Indeed, the Channel Swap Petition proposed to rob the people of Colorado Springs of the only clear permanent benefit USC promised them and the Commission in 1990 when it sought the waiver of the minimum spacing requirements, and the only clear permanent benefit it could provide them now.

66. The foregoing analysis demonstrates that the Report and Order correctly concluded that the proposed Channel Swap is not in the public interest, whether or not the Cheyenne Mountain site

in the USC construction permit is included in the swap. In addition, the allegations in the Application for Review of errors in the Report and Order's analysis are unfounded. Therefore, the Commission should deny the Application for Review.

**VII. CONCLUSION**

67. The Cheyenne Mountain construction permit was properly excluded from the rulemaking proceeding. The Report and Order was correct in denying the Consolidation Motion and in denying the Channel Swap Petition. Finally, the Joint Application for Review should be dismissed for violating Section 1.115(c) of the Commission's Rules.

WHEREFORE, Ackerley Communications Group, Inc. respectfully moves the Commission to deny the Joint Application for Review filed by the University of Southern Colorado and Sangre de Cristo Communications, Inc.

Respectfully submitted,

ACKERLEY COMMUNICATIONS GROUP, INC.

By: 

James L. Winston  
Walter E. Diercks  
Rubin, Winston, Diercks, Harris & Cooke  
1333 New Hampshire Avenue, N.W.  
Tenth Floor  
Washington, D.C. 20036  
(202) 861-0870

Dated: August 29, 1995

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Opposition of Ackerley Communications Group, Inc. To Joint Application For Review** was sent on this 29th day of August, 1995, via United States Mail, first class postage prepaid, unless otherwise indicated, to the following:

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 318  
Washington, D.C. 20554

Clay Pendarvis  
Chief, Television Branch  
Federal Communications Commission  
1919 M Street, N.W., Room 700  
Washington, D.C. 20554

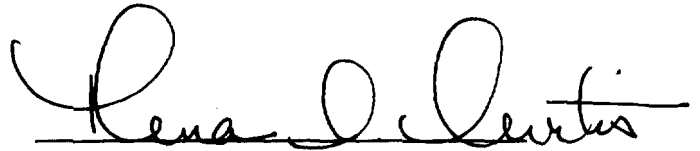
Roy J. Stewart  
Chief, Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Barbara Kreisman  
Chief, Video Services Division  
Federal Communications Commission  
1919 M Street, N.W., Room 702  
Washington, D.C. 20554

Wayne Coy, Jr., Esq.\*  
Cohn & Marks  
Suite 600  
1333 New Hampshire Ave., N.W.  
Washington, D.C. 20036

Kevin F. Reed, Esq.\*  
Suzanne M. Perry, Esq.  
Elizabeth A. McGeary, Esq.  
Dow, Lohnes & Albertson  
Suite 500  
1255 Twenty-third Street, N.W.  
Washington, D.C. 20037

Richard Hildreth, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17th Street  
11th Floor  
Arlington, VA 22209

A handwritten signature in black ink, appearing to read "Richard Hildreth", written over a horizontal line.

\* Denotes hand delivery



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**AMENDMENT**

Federal Communica  
Office of the S

The application of the University of Southern Colorado for a construction permit to improve the facilities of noncommercial educational television station KTSC-TV, Pueblo, Colorado (File No. BPET-900122KE) is hereby amended by the submission of the attached "Amendment to Request for Waiver".

Respectfully submitted

UNIVERSITY OF SOUTHERN COLORADO

By

  
President, University of Southern Colo

By

  
Tom Aube, Chief Engineer

March 7, 1990



## AMENDMENT TO REQUEST FOR WAIVER

This Amendment is submitted in order to clarify and embellish the request for waiver of the requirements of Section 73.610(b) of the Commission's Rules which is contained in Exhibit E-1A. This Amendment addresses the public interest considerations and other matters which support the waiver request, particularly in light of the formal opposition of MST which was filed on February 26, 1990.

The background of the current proposal is of extreme significance. The purpose of this proposal is to provide an adequate signal for the residents of Colorado Springs and its surrounding area from Station KTSC-TV, which is licensed to Pueblo. Pueblo and Colorado springs are considered a hyphenated market (the 99th major market) in the Arbitron listings (see, e.g., Broadcasting Yearbook '89, page C-157). More significantly, Colorado Springs is part of the area which the University of Southern Colorado was created to serve, not only by its broadcast station, but also by the various educational and outreach services which the University provides to that area of the State of Colorado.

The signal of Station KTSC-TV, with its present authorized facilities, partly because of the nature of the intervening terrain, is clearly inadequate to serve Colorado Springs. For this reason, the University has for a number of years operated a translator on Channel 53 to provide such service. The programming of Station KTSC-TV, during this period, has included numerous programs which dealt with Colorado Springs' issues and interests and which featured residents of Colorado Springs.

Unfortunately, the Commission has authorized a new full-power television station to operate on Channel 53 at Castle Rock, Colorado. When this station commences service, the Channel 53 translator will be forced to cease operation. When this prospect became known, the university conducted a thorough search for another UHF channel on which its translator could be operated. There are no such channels available. The University thereupon sought to inaugurate a rule making proceeding to allocate Channel 66 at Colorado Springs on a reserved basis. This effort also failed because the proposal violated the existing major market television freeze. The rule making was sought only after the University had determined that no UHF channel was available at or near Colorado Springs for the creation of a full-power satellite of Station KTSC-TV.

The University was thus confronted with the impending loss of the service which it has provided to Colorado Springs, and the financial support from Colorado Springs residents which is of significant importance to the entire broadcast operation. The instant application appears to provide the only possible mechanism

for the University to achieve its basic mission to provide educational service to all of the people of this area.

To serve the Colorado Springs and Pueblo markets with a VHF television signal there are only three site locations that can be considered, because of the local zoning restriction. The first site is the present transmitter site located on Baculite Mesa. This site does not allow sufficient signal penetration to provide adequate signal to the Colorado Springs market. Both Station KOAA-TV, Channel 5, and Station KTSC-TV share this site. Both KOAA and KTSC-TV have had to operate translator stations from Cheyenne Mountain to serve the Colorado Springs market.

The second site is a 1300-foot tall tower site located approximately 8 miles north of the Baculite Mesa site and approximately 1/2 mile south of the El Paso County line. The City of Colorado Springs is approximately 500 feet higher in elevation than the tall tower site. The distance from the tall tower site to the center of Colorado Springs is approximately 30 miles. The site is not acceptable for two reasons -- first, the distance and elevation differences from Colorado Springs will prevent a signal from this site to be received by the heavily populated areas located behind the many ridges that are a part of the Colorado Springs area; and, second, the fact that a very strong signal would be bounced off of Pikes Peak which is located west of Colorado Springs and received in Colorado Springs, would cause very bad ghosting of that signal in the Colorado Springs area. Even at its present location, Station KTSC's Channel 8 signal in Colorado Springs is very bad in some areas of the city because of this problem. Moving the transmitter and antenna closer to the mountain will only intensify the ghosting problem.

The Cheyenne Mountain site, therefore, is the only adequate site in the area. The antenna pattern has been carefully chosen so that no signal will be radiated toward Pikes Peak and because of the elevation of the site compared to Colorado Springs, a signal will be provided to the heavily populated ridges.

The only disadvantage of the Cheyenne Mountain site would be the high cost of the rent the University will have to pay but, it believes, as all of the renters on Cheyenne Mountain, that it is the only site that will provide the needed location.



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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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IN REPLY REFER TO

8940-MLB

Thomas Aube  
University of Southern Colorado  
2200 Bonforte Blvd.  
Pueblo, CO 81001

Re: Station KTSC(TV)  
Pueblo, CO  
BPET-900122KE

Dear Mr. Aube:

This is with respect to the above-captioned application of the University of Southern Colorado (University) for a modification of licensed facilities for noncommercial educational Station KTSC(TV), Channel 8, Pueblo, Colorado. Your application is opposed by the Association for Maximum Service Telecasters, Inc. (AMST), which filed an informal objection on February 26, 1990.

Your present transmitter site is located on Baculite Mesa, approximately eight miles north of Pueblo. Although Colorado Springs lies partly within the station's predicted principal community contour, intervening terrain prevents an adequate signal from reaching that community. Coverage of that community is important, you state, because of the various educational and outreach services the University offers there. Thus, until August 1990 you had utilized a television translator on Channel 53 to provide service to Colorado Springs, until forced off the air by a new full-power station on that channel. You state that you have been unable to find a new channel on which your translator could operate and that your modification application is an effort to find a site which could serve both Pueblo and Colorado Springs. You now propose to construct a tower on Cheyenne Mountain in an antenna farm southwest of Colorado Springs. That site is 296.1 kilometers (184.0 miles) from co-channel Station KJCT(TV), Grand Junction, Colorado, and 291.9 kilometers (181.4 miles) from the reference point for a co-channel allocation in Laramie, Wyoming. Section 73.610(b) requires a minimum separation of 304.9 kilometers (189.5 miles) in this part of the country. Accordingly, your proposed site is 8.8 kilometers (5.5 miles) short-spaced to Station KJCT(TV) and 13.0 kilometers (8.1 miles) short-spaced to the Laramie allocation. Accordingly you request waiver of the Rule. You also seek waiver of Section 73.685(e) of the Rules because the ratio of the maximum-to-minimum radiation of your proposed directional antenna would exceed 10 dB.

In support of your waiver request of Section 73.610, you argue that there are only three sites at which you could locate and provide a predicted signal to both Pueblo and Colorado Springs without running afoul of local zoning restrictions. The first is your present site, but you argue that intervening terrain prevents a viewable signal from reaching Colorado Springs. The second potential site is approximately eight miles north of your current site; however, operation from that site would result in severe ghosting. The third site is Cheyenne Mountain, which you have proposed. You state that the terrain

north and west of the proposed site is mountainous towards both Grand Junction and Laramie and that no objectionable interference would result. Additionally, you contend that you will afford equivalent protection to the Grand Junction station and a future co-channel station in Laramie.

In opposition, AMST argues that you have not made the threshold showing that no fully spaced sites, including its present site, are available. It further asserts that you have not made a compelling public interest justification necessary for waiver of the Rules.

After careful review of your application, we are persuaded that grant of your waiver requests would serve the public interest. The Commission is mindful of the unique role played by many noncommercial television stations in providing public television service to wide areas. You have established that the University serves both the Pueblo and Colorado Springs areas and that it is therefore important that your television station do so as well. You have unsuccessfully attempted to find another translator to serve Colorado Springs, and it would not be possible at this time to seek a new television channel, since there is currently a freeze on the filing of new applications in that part of the country. Further, it does not appear that you could modify the facilities of your current site sufficiently to provide a viewable signal in Colorado Springs. Consequently, your only alternative is to seek a new site, and we believe that you have demonstrated the unsuitability of any other sites from which you could serve both communities. We further note that, while there would be some loss areas to the south and east of Pueblo, these areas are largely unpopulated. Additionally, we agree that the mountainous terrain and your offer to reduce effective radiated power to the north and west would greatly reduce the possibility that objectionable interference to the Grand Junction station or to a future station in Laramie would occur. Finally, we note that Station KJCT(TV) in Grand Junction has not opposed your proposal. Therefore, we believe that waiver of Section 73.610 is warranted. We will also grant your request for waiver of Section 73.685, because the directional antenna pattern you propose would minimize the potential for ghosting. Additionally, that antenna pattern will enable you to provide the equivalent protection mentioned above.

Accordingly, for the reasons stated above, the informal objection filed by AMST IS DENIED, your requests for waiver of Sections 73.610 and 73.685 ARE GRANTED, and your application to modify the station's facilities IS GRANTED subject to the following conditions:

The maximum visual effective radiated power at azimuth 348 degrees True toward the Channel 8 allocation for Laramie, Wyoming, shall not exceed 21.3 dBk (135 kW).

The maximum visual effective radiated power at azimuth 278 degrees True toward Station KJCT(TV), Grand Junction, Colorado, shall not exceed 22.0 dBk (158 kW).

The application for license shall include:

- a. Horizontal plane radiation pattern obtained from measurements performed by the manufacturer for the transmitting antenna prior to its installation.
- b. Vertical radiation patterns obtained from measurements by the manufacturer for the transmitting antenna prior to its installation for at least the azimuth toward the Channel 8 allocation in Laramie and toward Station KJCT(TV).
- c. An affidavit by a qualified and licensed surveyor that the proper azimuthal orientation of the transmitting antenna achieves radiation limitations prescribed above for the Channel 8 allocation in Laramie and Station KJCT(TV).

Sincerely,

Barbara A. Kreisman  
Chief, Video Services Division  
Mass Media Bureau

cc: Wayne Coy, Jr., Esq.  
William H. Fitz, Esq.